(2018) 08 MP CK 0178

In the Madhya Pradesh High Court

Case No : Writ Appeal No.695 Of 2018

Birani Sons APPELLANT

Vs

State Of Madhya Pradesh & Another RESPONDENT

Date of Decision : 23-08-2018

Acts Referred:

Constitution of India, 1950 — Article 222, 226, 227
Indian Stamp Act, 1899 — Section 33
Madhya Pradesh Uchcha Nyaylaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 — Section 2, 2(1)

Citation : (2018) 08 MP CK 0178

Hon'ble Judges : P.K. Jaiswal, J;S.K. Awasthi, J

Bench : Division Bench

Advocate : A.K. Sethi, Rishabh Sethi, V. Patwa

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J

By filing this intra court appeal the appellant is challenging the order dated 27.2.2018, passed by the learned writ court, whereby the learned writ court

set aside the order of Board of Revenue, Gwalior and allowed the writ petition filed by the respondents under Article 226/227 of the Constitution of

India.

2. The facts of the case are that the Official Liquidator, High Court of Calcutta in pursuance of an order dated 5.3.2001, passed in BIFR Case

No.126/1991 in the matter of Reliance Ispat Industries Ltd., issued a sale notice in respect of the properties of the said industry situated at A.B. Road

Berakhedi, Dewas and invited tenders in the sealed cover from the intending purchasers. The appellant made the highest offer of Rs.10.12 Crore to purchase the entire property of Reliance Ispat Industries Ltd. The learned Company Judge vide order dated 31.08.2001, accepted the bid of the

appellant. By the aforesaid order, the entire movable and immovable properties of the sick industry - Reliance Ispat Industries Ltd were sold to the

appellant in consideration of Rs.10.12 Crore. Thereafter, a sale certificate dated 4.8.2003 was issued by the Official Liquidator, High Court, Calcutta

and sale â?" deed dated 25.07.2003 was executed between the appellant and the Official Liquidator, certifying that the appellant has purchased the

assets of the Reliance Ispat Industries Ltd. Being its factory premises at Industrial Area, A.B. Road, Berakhedi, Dewas (both movable and

immovable assets) in Rs.10.12 Crore. The appellant has deposited the full consideration of money on 4.10.2001 and the possession of the said movable

and immovable properties were handed over to the proprietor. The sale certificate is reproduced below :-

â??Sale Certificate

This is to certify that the Birani sons of 5/12, Yeshwant Niwas Road, Indore â?" 3 has purchased the assets of the Reliance Ispat Industries Ltd. (In

Liquidation) lying at its factory premises at the Industrial Area, A.B.Road, Berakhedi, Dewas, M.P. (both movable and immovable assets) and

movable assets at New Lohamandi, Indore vide order dated 31.8.2001 and 3.9.2001 of the Hon'ble High Court, Calcutta at Rs.10.12 Crores. The said

purchaser has deposited the full consideration money of Rs.10.12 Crores on 4.10.2001 and the possession of the said property i.e. movable and

immoveable properties were handed over to Mr. Dilip Birani, Proprietor of M/s Birani Sons on 8th & 9th of November, 2001. A list of assets both

movable & immovable) as per sale notice is enclosed herewith. The proportionate value of the moveable property is Rs.7,26,03,720-00.

Enclo : As stated; Sd/-

Dated 4th day of August, 2003. Official Liquidator,

High Court,Calcuttaâ??

3. Thereafter, vide letter dated 17.11.2013, the Official Liquidator informed the Registrar, Dewas, that he executed the instrument of conveyance in

respect of the properties of the Company in liquidation and he is exempted from personal appearance to any registration of any instrument executed

by him in official capacity. He has authorized his assistant Shri Tapas Kumar Das to appear and execute the sale-deed.

4. The appellant presented sale deed before the Registrar for registration who found that the sale deed is not adequately stamped as the entire

consideration has not been taken into consideration while affixing the stamps on the sale deed. The respondent No.1 impounded the sale deed under

the provisions of Section 33 of the Indian Stamp Act and referred the matter to the District Registrar and Collector of Stamps, Dewas vide reference

order dated 06.12.2003. On receiving the aforesaid reference, the District Registrar and Collector of Stamps, Dewas initiated the proceedings against

the Respondent by issuing show-cause notice. After receipt of the show-cause notice, the appellant submitted a detailed reply on 12.01.2004 by

contending that the impugned sale-deed is only in respect of sale of immovable property worth Rs.2,85,96,280/- because the rest of the property worth

Rs.7,26,03,720-00 are movable properties for which he is not liable to pay stamp duty. During the course of enquiry, the respondent No.2 inspected the

spot and found that the plant and machinery are embedded in earth and observed that the plant is capable of running. The photo copy of the spot

inspection report dated 20.02.2004 is filed as Annexure P/8. The District Registrar after affording sufficient opportunity to the appellant and taking into

consideration the entire material on record passed the order dated 24.02.2004 directing the appellant to pay the stamp duty on entire sale consideration

i.e. Rs.10.12 crores. The respondent No.2 vide order dated 24.02.2004 directed the appellant to pay a sum of Rs.76,26,200-00 towards deficit stamp

duty and penalty.

5. Being aggrieved by order dated 22.4.2004, passed by the District Registrar, the appellant preferred the appeal before the Board of Revenue,

Gwalior. By order dated 28.4.2004, the Board of Revenue has set aside the order of the Collector (Stamps) on the ground that the appellant is liable to

pay the stamp duties on the value of the property mentioned in the sale deed. Being aggrieved by the order of Board of Revenue, the Respondents â?

Government of M.P. had preferred the Writ Petition No.932/2004. The learned writ court considering the fact that the sale certificate was issued for

a sale of entire fixation including movable and immovable in total consideration of Rs.10.12 Crore, but before its execution, a deed of conveyance had

been executed for sale of only the land in consideration of Rs.2,85,96,280/-. The learned writ court after appreciating the aforesaid came to the

conclusion that Official Liquidator has executed the sale deed on 25.7.2003, much before the issuance of sale certificate dated 4.8.2003. The sale

certificate is conveyance of such title and the auction purchaser derives title on confirmation of sale in his favour and a sale certificate is issued

evidencing such sale and title. It is also observed that in the Schedule appended to the sale deed, the building structures lying thereon has been

mentioned as the property sold. The sale was made â??as is where is basisâ? by the Court. The sale certificate was issued by the Official Liquidator

for movable and immovable property both. Therefore, the Registrar has rightly came to the conclusion that the appellant is liable to pay the stamp duty

on total consideration of Rs.10.12 Crore and set aside the order passed by the Board of Revenue while allowing the writ petition. It is this order, which

has been impugned in this intra court appeal filed under Article 227 of the Constitution, under the provisions of Section 2 of M.P. Uchcha Nyaylaya

(Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005.

6. Learned Senior counsel for the appellant has submitted that movable property, ie., plant and machinery are not executable. A learned writ court,

without considering the aforesaid upheld the order of District Registrar by holding that appellant is liable to pay the stamp duty on the basis of sale

certificate issued by the Official Liquidator on 4.8.2003 and has committed a legal error in directing the appellant to pay the stamp duty on total

consideration of Rs.10.12 Crore.

7. In the case of Duncans Industries Ltd Vs State Of U.P. & Ors. (Civil Appeal No.5929 of 1997 decided on 3 December, 1999), the Hon'ble

Supreme Court, dismissed an appeal filed by a company against the stamp duty levied on a conveyance deed to transfer a running fertiliser business to

the company. According to the judgement, the vendor, as per the conveyance deed dt. 9.6.1994, has conveyed the title it had not only in regard to the

land in question but also to the entire fertilizer business in 'as in where is' condition, including the plant and machinery standing on the said land.

Therefore, the authorities below were totally justified in taking into consideration the value of these plant and machineries along with the value of the

land for the purpose of the Stamp Act. The Apex Court agreed with the finding of the High Court that the plant and machinery in the instant case are immovable properties. It observed that the question whether a machinery which is embedded in the earth is movable property or an immovable

property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties

whether the embedment was intended to be temporary or permanent. The Apex court observed that a careful perusal of the agreement of sale and

the conveyance deed along with the attendant circumstances, and taking into consideration the nature of machineries involved clearly shows that the

machineries which have been embedded in the earth to constitute a fertilizer plant in the instant case, are definitely embedded permanently with a

view to utilise the same as a fertilizer plant. The same was not embedded to dismantle and remove the same for the purpose of sale as machinery at

any point of time. Hence, the contention that these machines should be treated as movables cannot be accepted. Nor can it be said that the plant and

machinery could have been transferred by delivery of possession on any date prior to the date of conveyance of the title to the land.

8. Learned Government Advocate has drawn our attention to the decision of the Apex Court in the case of Jogendrasinghji Vijay Singhji V/s. State of

Gujarat reported as 2015 (9) SCC 1 and submitted that the writ petition was filed under Article 226 of the Constitution and admittedly relief was

claimed in the writ petition under Article 227 of the Constitution and no relief as prayed / claimed under Article 222 of the Constitution was given in

the writ petition and hence the writ appeal is, not maintainable. In the case of (Smt. Hansa Devi & Anr. V/s. Chandar Singh & Ors.) the question

regarding maintainability of the writ petition under Article 227 of the Constitution of India was considered and this Court after hearing the learned

counsel for the parties at length has dealt with the issue of maintainability of writ appeal against an order passed in exercise of jurisdiction conferred

under Article 227 of the Constitution of India and dismissed the writ appeal.

9. On 27/10/2015 also this court in W.A. No.417/2015 considering the aforesaid arguments dismissed the writ appeal by holding the following grounds

:-

â??Keeping in view the judgments delivered by this Court in the case of Manoj Kumar Vs. Board of Revenue and others reported in 2007 (4) MPHT

545(FB), Jaidev Siddha Vs. Jaiprakash Siddha reported in 2007 (3) MPLJ 595 and the decision of Apex Court in the case of Ramesh Chandra Sankla

Vs. Vikram Cement reported in AIR 2009 SC 713, this Court is of the considered opinion that the learned Single Judge was exercising power of

superintendence under Article 227 of the Constitution of India and, therefore, remedy of intra-court appeal is not available.

In the light of the aforesaid, as it was purely a writ petition under Article 227 of the Constitution of India, the present writ appeal filed under Section

2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005, is not at all maintainable.â??

10. This court in the case of Jyoti Nagar Grah Nirman Sahakari Sanstha Maryadi through President Sany V/s. Baljeet Singh (W.A.No.395/2017

decided on 4.9.2017) has dismissed the appeal as not maintainable keeping in view para 18 of the judgment of the Apex Court in the case of

Jogendrasinghji Vijay Singhji V/s. State of Gujarat and Others (supra) has observed thus :-

â??18. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only be assailed under Article 227

of the Constitution of India and the parameters of challenge have been clearly laid down by this Court in series of decisions which have been referred

to by a three-Judge Bench in Radhey Shyam (supra), which is a binding precedent. Needless to emphasise that once it is exclusively assailable under

Article 227 of the Constitution of India, no intra-court appeal is maintainable.

19. The next aspect that has to be adverted to is under what situation, a Letters Patent Appeal is maintainable before a Division Bench. We repeat at

the cost of repetition, we have referred to series of judgments of this Court which have drawn the distinction between Article 226 and 227 of the

Constitution of India and the three-Judge Bench in Radhey Shyam (supra) has clearly stated that jurisdiction under Article 227 is distinct from

jurisdiction under Article 226 of the Constitution and, therefore, a letters patent appeal or an intra-court appeal in respect of an order passed by the

learned Single Judge dealing with an order arising out of a proceeding from a Civil Court would not lie before the Division Bench. Thus, the question

next arises under what circumstances a letters patent appeal or an intra-court appeal would be maintainable before the Division Bench.

30. From the aforesaid pronouncements, it is graphically clear that

maintainability of a letters patent appeal would depend upon the pleadings in the

writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the

jurisdictional perspectives in the constitutional context. Barring the civil court, from which order as held by the three-Judge Bench in Radhey Shyam

(supra) that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be

under Article 227 of the Constitution. Whether the learned Single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both,

needless to emphasise, would depend upon various aspects that have been emphasised in the aforestated authorities of this Court. There can be orders

passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide

and imbricate. We reiterate it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench

hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under

Article 226 or 227 of the Constitution or both. The Division Bench would also be required to scrutinize whether the facts of the case justify the

assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation. Be it stated, one of the

conclusions recorded by the High Court in the impugned judgment pertains to demand and payment of court fees. We do not intend to comment on the

same as that would depend upon the rules framed by the High Court.

11. This court in the case of Trustees of H.C. Dhanda Trust V/s. State of M.P. & Ors. (W.A.No.265/2017) keeping in view the order passed by the

Apex Court in the case of Jogendrasinghji Vijay Singhji V/s. State of Gujarat and Others (supra) was of the view that since the petition therein was

purely petition under Article 227, has dismissed the writ appeal as not maintainable.

12. This court after appreciating the arguments in the case Jyoti Nagar Grah Nirman Sahakari Sanstha Maryadi through President SanyÂ V/s.Â

Baljeet Singh (supra) and Trustees of H.C. Dhanda Trust V/s. State of M.P. & Ors. came to the conclusion that the writ appeals are not maintainable

and intra court appeal remedy is not available to the appellant therein. Thus, we are of the view that the learned writ court has rightly came to the

conclusion that appellant is liable to pay the stamp duty on the basis of sale certificate issued by the Official Liquidator. No case to interfere with the

aforesaid order, as prayed by the learned Senior counsel for the appellant is made out and, therefore, we dismiss the writ appeal on merit as well as on

the question of maintainability.

No costs.

